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INVENTOR Coppelman et al
CASE No. 10771-101-0101
SERIAL No. 5711521985
FILED: 12-4-90
ATTORNEY RDK

The Patent and Trademark Office acknowledges, and has stamped hereon the date of receipt of the items checked below:

AFFIDAVIT APPEAL NOTICE
 AMENDMENT APPLICATION PAPERS - OATH/DECLARATION
 ASSIGNMENT CERTIFICATE OF CORRECTION
 CLAIM OF PRIORITY AND CERTIFIED COPIES
 DECLARATION
 ISSUE FEE
 LETTER - CHARGE DEPOSIT ACCOUNT
 LETTER LICENSE REQUEST
 MOTION
 PETITION
 PRELIMINARY STATEMENT
 PRIOR ART STATEMENT 173
 REQUEST FOR EXTENSION OF TIME
 RESPONSE STIMULATION
 SWEORN TRANSLATIONS
 EXHIBIT R.C. ADDENDA
 CANCELLATION



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Hermann Oppermann, et al.

Serial No.: 07/621,988

Examiner: Nutter

Filed: December 4, 1990

Group Art Unit: 155

For: OSTEOGENIC DEVICES

Docket No.: CRP001CP2DV

CERTIFICATE OF MAILING

Honorable Commissioner of Patents
and Trademarks
Refund Section of Accounting Division
Office of Finance
Washington, DC 20231

I hereby certify that this correspondence is being
deposited with the United States Postal Service as First
Class Mail in an envelope addressed to Honorable
Commissioner of Patents and Trademarks, Washington
D.C. 20231 on 11-5-91

Dear Sir:

Susan Dellarocco
Signature11-5-91
Date

Applicants respectfully request a refund of all charges to Deposit Account 12-0080 in connection with the above-referenced application. Specifically, Applicants respectfully request reimbursement of the \$1,200.00 charge of January 4, 1991 (account code 101; Invoice #11004); and the \$720.00 (account code 102) and \$460.00 (account code 103) charges of July 19, 1991 (Invoice #20122). The reasons for this request are outlined below.

On December 4, 1990, Applicants filed the divisional application referenced above. A copy of the filing documents is attached as Exhibit A. As filed, the application contained all the claims originally filed in the parent application, USSN 315,342, see Exhibit B, attached. Through an inadvertent clerical error, Applicants initially neglected to delete those claims which

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had been prosecuted to allowance in the parent application (claims 1-20, 58-70), although these claims clearly would not be reProsecuted in a divisional application (MPEP §201.6).

Applicants also filed a Preliminary Amendment concurrently with the application, which increased the number of independent claims in the application (see Exhibit C, attached.) A check in the amount of \$1,991.00 was filed with the application as payment for filing fees due. This check reflected the deletion of the claims prosecuted in the parent application (claims 1-20, 58-70) as well as the claims added by amendment (60 total claims, 14 independent claims).

Applicants subsequently identified their inadvertent clerical error, e.g., failure to delete the claims prosecuted in the parent application (claims 1-20, 58-70) and on January 7, 1991, Applicants filed a second Preliminary Amendment specifically deleting these claims (see Exhibit D, attached.) Upon recalculation of the claims with the January 7, 1991 Amendment, Applicants further identified a calculation error of \$100.00. Accordingly, a second check in the amount of \$100.00 was enclosed. Applicants now have submitted two checks totalling \$2,090.00 for fees due in this application which are sufficient for a total of 60 claims, and 14 independent claims filed under large entity status.

On January 4, 1991 Applicant's Attorneys' deposit account (12-0080 at that time) was debited \$1,200.00 for additional basic filing fees due on the above-referenced application. Two additional charges for filing fees associated with this application subsequently appeared on the account on July 19, 1991: \$720.00 under account code 102, (independent claims in excess of three) and \$460.00 under account code 103, (claims in excess of twenty). Applicants respectfully submit that all these additional charges are in error and are inappropriate.

WJS

Through an inadvertent clerical error, claims prosecuted to allowance in a parent application were not originally deleted from the divisional application when it was filed. However, as soon as the error was identified it was corrected. Deletion of these claims with the January 7, 1991 Amendment was not a "mere change of purpose" as defined in 37 CFR §1.26 (MPEP 509). These claims had been prosecuted to allowance in the parent case and the filing of the divisional application clearly indicated that these claims were not to be reprosecuted. The MPEP clearly states under Section 201.06 that a divisional application is filed for a distinct invention that has been restricted from the parent application. Applicants respectfully submit that the error was a clerical one and did not result from a change in purpose as defined in the statute and that they are entitled to a refund of excess fees paid by actual mistake.

It also should be noted that Applicants fail to correlate the value of the charges debited to the account to any combination of claims filed in this application. Specifically, the additional charge of \$1,200 on January 4, 1991 does not appear to correspond to any combination of claims, nor do the additional July 19, 1991 charges of \$720.00 and \$460.00. The calculation of these charges therefore appear to be in error.

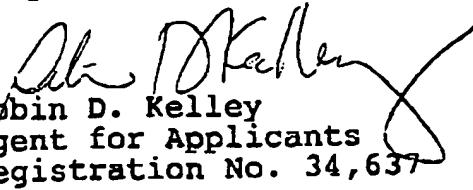
Applicants respectfully submit that they submitted sufficient funds for the necessary fees in a timely fashion and that the charges to Attorney Deposit Account 12-0080 of \$1,200.00, \$720.00, and \$460.00 are in error. Accordingly, Applicants respectfully request that these charges be refunded to Attorney Account No. 12-00820 expeditiously.

WJH

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The Office of Finance is invited to call the undersigned Agent at the telephone number indicated below to expedite this matter and/or if additional information or further discussion would be beneficial.

Very truly yours,


Robin D. Kelley
Agent for Applicants
Registration No. 34,637

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299RDK7557/2.AA7

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Oppermann, et al.
USSN 621,988
Filed 12/4/90

EXHIBIT A

REFUND

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Docket No. CRP-001CP2DVAnticipated Classification of
this application:

Class _____ Subclass _____

Prior application:

Examiner N. NutterArt Unit 153

The Commissioner of Patents and Trademarks
Washington, D.C. 20231

FILING UNDER 37 CFR 1.60

Sir:

This is a request for filing a continuation X divisional
application under 37 CFR 1.60 of pending prior application
Serial No. 315,342 filed on February 23, 1989
of Hermann Oppermann, Thangavel Kuberanpath, David C. Rueger
(inventor currently of record in prior application)
for Osteogenic Devices
(title of invention)

- X Enclosed is a copy of the prior application.
- A verification of small entity status is enclosed
(required even if statement was filed in prior
application).
- X The filing fee is calculated below:

CLAIMS AS FILED IN THE PRIOR APPLICATION,
LESS ANY CLAIMS CANCELLED BY AMENDMENT BELOW

For	Number filed	Number extra	Rate	Basic fee
				<u>\$ 630</u>
Total claims	51	- 22 = 29	x 70 \$ 580	= 580
Independent claims	16	- 3 = 13	x 60 \$ 780	= 780

\$1,990.00

Total calculation

Small entity reduction
(50% of above, if applicable)

TOTAL FILING FEE

\$1,990.00

U29

4. The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. _____.

5. X A check in the amount of \$ 1,990.00 is enclosed. The Commissioner is authorized to charge any additional fees which may be required, or credit any overpayments to Deposit Account No. 12-0080.

6. Cancel in this application original claims of the prior application before calculating the filing fee. (At least one original independent claim must be retained for filing purposes.)

7. X Amend the specification by inserting before the first line the sentence: --This is a continuation X division, of application Serial No. 315,342, filed February 23, 1989.--

8. Transfer the drawings from the prior application to this application and abandon said prior application as of the filing date accorded this application. A duplicate copy of this sheet is enclosed for filing in the prior application file. (May only be used if signed by person authorized by §1.138 and before payment of base issue fee.)

8a. X New formal drawings are enclosed.

8b. Informal drawings are enclosed.

9. Priority of application Serial No. _____ filed on _____ in _____ (country) is claimed under 35 U.S.C. 119.
The certified copy has been filed in prior application Serial No. _____, filed _____.

10. X The prior application is assigned of record to Stryker Corporation.

11. The power of attorney in the prior application is to Edmund R. Pitcher, Esq., Reg. No. 27,829, Lahive & Cockfield, 60 State Street, Boston, MA 02109
(name, registration number, and address)

a. X The power appears in the original papers in the prior application.

b. Since the power does not appear in the original papers, a copy of the power in the prior application is enclosed.

c. X Address all future communications to Edmund R. Pitcher, Esq.
Lahive & Cockfield
60 State Street, Boston, MA 02109
(May only be completed by applicant or attorney or agent of record.)

12. A petition, fee and response has been filed to extend the time in the pending prior application until _____ (must be completed and papers filed if the period set in the prior application has run out).

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13. A preliminary amendment is enclosed. (Claims added by this amendment have been properly numbered consecutively beginning with the number next following the highest numbered original claim in the prior application.)

14. X I hereby verify that the attached papers are a true copy of prior application Serial No. 315,342 as originally filed on February 23, 1989 including the oath or declaration and drawings.

15. Also enclosed is:

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

December 4, 1990

Date

Address of signator:

Lahive & Cockfield

60 State Street

Boston, MA 02109

Signature

John R. Bush

Inventor (s)
 Assignee of complete interest
 Attorney or agent of record
 filed under 35.34(a)

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